

# **PROGRESS REPORT**

## **Comm 47 CODE ADVISORY COMMITTEE**

DATE: Wednesday, August 21, 2002

TIME: 9:00 a.m. – 3:00 p.m.

LOCATION: Tommy G. Thompson Commerce Center, Room 3B  
201 West Washington Avenue  
Madison, Wisconsin

### **COMMITTEE MEMBER ATTENDANCE:**

Dave Blatnik (Robert Elvert)	Present	Kevin Olson	P
Richard Blatter (Gary Manke)	P	Robert Pearson	P
Tim Clay	P	Boyd Possin	P
Kelly Cochrane	P	Tom Reinsch	P
Sean Dilweg	P	Dick VanGrinsven	P
Scott Hafner	P	Scott Wilson	Excused
David Havick	P	Wendell Wojner	P
Mark Maten (Steve Oseseck)	P		

### **GUESTS:**

John Alberts	Jason Kohout – Wisconsin Water Well Assn.
Kendra Bonderud – Legislative Fiscal Bureau	Pete Pavalko – PEP Environmental, LLC
Don Gallo – Petroleum Marketers of Wisconsin	Dave Scherzer – Sigma, Inc.
Gary Henningsen – Northern Environmental	Raghu Singh – OM Enterprises

### **DEPARTMENT OF COMMERCE STAFF:**

Cathy Cliff	Sam Rockweiler
Dennis Legler	Eric Scott

Dennis Legler opened the meeting with a review of the agenda and a round of introductions, and the Committee accepted the previous meeting's progress report.

### **Draft rules for public bidding**

Eric Scott explained that the first portion of the draft rules which were transmitted with the agenda establishes a process that would allow the Department and the Department of Natural Resources to make timely estimates of which projects will have PECFA costs exceeding \$60,000 and therefore have public bidding. Eric added the process includes a sequence for filing annual reports.

Scott Hafner agreed having the Departments involved early at sites would be beneficial, and would be similar to the involvement that occurs in other states with successful PECFA programs. Scott suggested however, that significantly bigger changes may be needed to prevent the PECFA fund from becoming insolvent.

### **Bigger changes**

Kevin Olson agreed bigger changes are needed, and recommended the Department should begin fixing the budget shortfalls by, for example, discontinuing its approval of nonemergency cleanups, and then return to fine-tuning the remediation aspects after the shortfalls are corrected.

Don Gallo recommended considering various components of the dry-cleaner remediation program administered by the DNR, such as having state-level review of three independent proposals for a site before further work proceeds. Boyd Possin commented that having this more-intensive review performed at the current staffing level would tend to allow only the highest priority sites to proceed. Cathy Cliff explained that a statutory change would be needed before this type of review could be implemented.

Kevin Olson recommended pursuing a statutory change that would simply but broadly commit the PECFA program to not spend more than the incoming revenue, and to not pay interest on new work. Gary Manke commented that the Legislature should be receptive to that change if provided with reliable data showing the extent of outstanding costs. John Albert indicated that substantial statutory changes could take a long time to achieve. Sean Dilweg agreed the Committee should recommend statutory changes to address the budget shortfalls.

Dick VanGrinsven agreed work should not begin on low priority sites until revenue is available to fund them, and supported changing to preapproval of the work. Kevin and Boyd agreed nonapproved work could begin, but should not be allowed to accrue eligible interest charges until a PECFA approval is issued. Scott Hafner suggested combining the duties of the Department's site reviewers and claim reviewers, to avoid having two people review the same file.

Kevin commented that an appropriately targeted schedule of usual and customary costs could adequately address most of the low priority sites, but the current statutory provisions for the cost schedule are nonfunctional and should be changed.

Dick suggested that high priority sites should only include sites which are a threat to public health or the environment, and indicated these are a small percentage of the total number of sites.

Tom Reinsch suggested that discontinuing payment for interest costs at all sites would be accepted if all further work is preapproved, and if either a quarterly payment process or a direct-pay process is used, along with an effective prioritization method. Gary Manke commented that a direct-pay process would be popular.

Cathy Cliff asked whether the groups represented by the Committee members would support changing to a prioritization method, and the consensus was favorable.

Tom suggested that proposing to discontinue payment for any further interest costs would be helpful in persuading the Legislature to authorize the additional bonding needed to fund all of the current backlog of nonreimbursed PECFA work.

Cathy noted South Carolina, Florida, and Oklahoma are using prioritization methods for their PECFA programs. Cathy added that the Department has asked all consultants to provide estimates by October 1 of the funds needed for completing all remaining work at all of the current PECFA sites.

Don Gallo suggested adopting an emergency rule that would deny payment from PECFA for any work which is performed without preapproval from the Department. Kevin suggested the emergency rule should also deny payment for any work at nonpriority sites. Dick suggested the emergency rule should also address getting a reliable estimate of the unsubmitted backlog of PECFA claims. Don added that owners of nonpriority sites would still be required to proceed with cleanup activity, but at a slower pace, as occurs in the DNR's dry-cleaner program.

Kevin and Boyd agreed PECFA should continue to pay for site investigations at all sites, but the investigations could be tiered, and that the prioritization method should include consideration of any redevelopment plans at a site. Robert Pearson recommended that the prioritization method should not overlook threats to subsurface workers performing nonPECFA work at a site.

Tom commented that discontinuing payment for interest costs would motivate owners to provide more oversight, which would help control costs.

### **Brainstorming the issues**

Committee members were concerned about the larger issues and were not comfortable discussing the draft rule section on bidding. Cathy suggested that the Committee take some time to brainstorm about what issues, solutions or suggestions each of them had on how the PECFA program could be changed to relieve concerns about incoming costs exceeding incoming revenues. After the brainstorm, the group discussed each item. The following changes were discussed, and consensus was reached, except where stated or indicated otherwise.

1. Should a risk-based corrective approach be used for allocating the available revenue? Kevin noted this would include funding emergency and high priority sites, sites with an existing payment commitment from PECFA, and at least initial portions of site investigations. Don Gallo noted that the Department and the DNR have different definitions of what an emergency site is. Eric Scott recommended focusing attention on existing projects that are using up a large amount of PECFA revenue. Kevin commented that a risk-based approach could be better structured to avoid wasting money, such as by reducing groundwater monitoring intervals at sites with slow groundwater movement. Consensus was not reached.
2. Should PECFA stop paying for work that is not authorized by the Department, and should the Department annually authorize only the amount of work that can be paid for with the PECFA allotment each year? The authorization could consist of preapprovals that are valid for a specified amount of time. Consensus was not reached.
3. Reliable data will be needed to support any substantial proposed modifications.
4. Are DNR's environmental standards part of the problem? Don commented they have been less problematic in recent years. Some fine tuning may be needed for the monitoring or staged sites, and for the definition of high risk. Consensus was not reached.
5. Should payments be prorated, rather than paid on either a prioritized or first-in, first-out basis? Don explained that prorated payments could be determined by a computer-driven process, rather than be subjective, as in a prioritized process. Consensus was not reached.
6. Should sites with a high priority rating retain that rating until cleanup activity is completed, or until they are cleaned to below the threshold for the rating. Consensus was not reached.
7. Should interest costs be ineligible for work that proceeds without preapproval? Cathy noted interest costs would be avoided in a direct-pay process. Boyd asked whether direct-pay should be used for the nonpriority sites. Consensus was not reached.
8. Should the duties be combined for the Department's site reviewers and claim reviewers? Kevin commented that preapprovals and direct payments could make the question moot. According to Eric, the pay-for-performance process in the transmitted rule draft would also reduce the ineligibility determinations. Dennis asked how completion of work should be verified where direct payments or pay-for-performance are used. Dave Henningsen suggested that the owner could be required to provide the Department with a 3-day advance notice of completion of work, so that staff could perform spot checks. A consensus was reached that staffing issues are administrative topics and not for the Committee to decide.
9. To what extent should preapprovals be used? Kevin said preapprovals should not be used for site investigations, but a tailored schedule of usual and customary costs could be applied. Eric

recommended having staff review the site investigation work before it is substantially completed. Robert Pearson commented that the process should be structured to accommodate the projects where the site investigation and cleanup must be completed within a short time period, such as one year. Consensus was not reached.

10. The schedule of usual and customary costs should be expanded to address small, early phases of work, rather than only hourly rates for particular tasks.
11. Why fund cleanup of sites with little or no risk, and who should determine the risk? And, where funding is delayed for these sites but a preapproval has been issued, and some cleanup is occurring, can the DNR apply more discretion in enforcement? Eric commented that having a site investigation completed for these sites would be helpful to the DNR and lending institutions. Kevin indicated that doing nothing further at these sites for a period such as five years after a site investigation could result in no cleanup being needed or required after that period.
12. Guidelines should be developed for determining which sites have high priority. Boyd asked whether the high priority category should be subdivided, and whether a better definition could be developed for high risk.
13. Preapprovals may not eliminate the need for a schedule of usual and customary costs, and preapprovals could include cost caps.
14. Additional bonding should be obtained to pay off all outstanding work. Should all ongoing work be stopped until all current sites are prioritized?
15. For nonpriority sites, some responsible parties could accept not receiving payments for interest costs if there is an option to proceed in a manner that retains the ability to receive payment for the principal when the PECFA fund can afford it.
16. Emergency rules may be needed to prevent the PECFA fund from becoming unstable, and reliable data is needed for demonstrating the fund's significant financial problems. Dennis explained that lender reports must be submitted by the end of August which will show the total amount of PECFA work that has been paid for but has not yet been submitted for reimbursement; and that the reports from consultants by October 1 will provide the total additional cost to complete all of the current PECFA work. However, this data will not show the time period needed for the completion. Tom said the work that has been completed but not yet invoiced should be counted as well. Should the emergency rules stop all spending on new sites until a deadline is set for submitting all outstanding claims, and should any outstanding claims that are not submitted by the deadline be denied?
17. The public bidding process should be improved.
18. Should the report forms be changed to be similar to the forms used in Iowa? Eric said the draft site investigation report form that was distributed with the agenda may be better than the corresponding Iowa form.
19. Owners should scrutinize the work and costs under PECFA, as occurs under DNR's dry cleaner program.
20. A broad coalition of stakeholders, that includes the Committee members, should be developed to foster any statutory changes which are needed to implement the nonstatutory changes.
21. The draft rules that were transmitted with the agenda should be expanded to specify the process for waiving public bidding.

22. Owners will likely scrutinize expenditures more closely if all interest costs are ineligible. The goal should be to eliminate all interest costs, rather than transfer them to the owner.
23. Where direct payments are used, the owner's deductible should be paid before any payments are made from the PECFA fund.
24. For low priority sites where completion of cleanup is delayed due to postponed funding, interim transfer of the real estate may be problematic.
25. New site investigations should be tiered and funded accordingly, in order to establish the risk level. How should in-progress site investigations proceed?
26. Can a high priority be assigned to sites in high-priority DOT projects with short time frames, sites in time-sensitive brownfields projects, and sites included in probate proceedings?

### **Next Meeting**

The next meeting was scheduled for September 18, 2002, at the same location and time. The meeting is expected to include, as a primary topic, discussion of a plan from the Department for implementing the agreements from the August 21 meeting, and, as a secondary topic, further discussion of the transmitted draft rules for the public bidding process.

*Submitted by Sam Rockweiler, code consultant to the Committee*  
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